

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
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Attorney for BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING,
LP ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CASE NO. 09-38015-HDH-7
	§	
GARY MORGAN,	§	
Debtor	§	CHAPTER 7
	§	
BAC HOME LOANS SERVICING, LP	§	
FKA COUNTRYWIDE HOME	§	
LOANS SERVICING, LP ITS	§	
ASSIGNS AND/OR SUCCESSORS IN	§	
INTEREST,	§	
Movant	§	HEARING DATE: 02/10/2010
	§	
v.	§	TIME: 11:00 AM
	§	
GARY MORGAN; ROBERT MILBANK,	§	
JR., Trustee	§	
Respondents	§	JUDGE HARLIN D. HALE

**MOTION OF BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME
LOANS SERVICING, LP ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO
§ 362(e)**

NOTICE - RESPONSE REQUIRED

PURSUANT TO LOCAL BANKRUPTCY RULE 4001 (b), A RESPONSE IS REQUIRED. THE TRUSTEE, IF ONE HAS BEEN APPOINTED, OR THE DEBTOR SHALL FILE A RESPONSE TO ANY MOTION FOR RELIEF FROM THE AUTOMATIC STAY WITHIN FOURTEEN (14) DAYS FROM THE SERVICE OF THE MOTION. THE DEBTOR'S RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

File a written response with the court at:

**CLERK, U.S. BANKRUPTCY COURT
EARLE CABELL U.S. COURTHOUSE, 1100 COMMERCE STREET, Room
1254,
DALLAS, TX 75242**

UNDER BANKRUPTCY RULE 9006 (e) SERVICE BY MAIL IS COMPLETE UPON MAILING; UNDER BANKRUPTCY RULE 9006 (f), THREE (3) DAYS ARE ADDED TO THE PERIOD FOR FILING A RESPONSE WHEN NOTICE OF THE PERIOD IS SERVED BY MAIL.

HEARING PARTICIPANTS ARE NOTIFIED THAT ABSENT COMPELLING CIRCUMSTANCES, EVIDENCE PRESENTED AT PRELIMINARY HEARINGS IN THE DALLAS DIVISION ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY WILL BE BY AFFIDAVIT ONLY. THE PARTY REQUESTING THE HEARING MUST SERVE EVIDENTIARY AFFIDAVITS AT LEAST 7 DAYS IN ADVANCE OF SUCH HEARING; THE RESPONDING PARTY MUST SERVE EVIDENTIARY AFFIDAVITS AT LEAST 48 HOURS IN ADVANCE OF SUCH HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING, LP ITS ASSIGNS AND/OR
SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the
Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.

2. On or about November 25, 2009, Debtor (hereinafter "Debtor") filed a petition for an order of relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C.

3. At the time of filing the Chapter 7 petition, Movant held a Note executed on July 24, 2008, by GARY MORGAN in the original amount of TWO HUNDRED EIGHTY-ONE THOUSAND SEVEN HUNDRED FIFTY-ONE DOLLARS AND ZERO CENTS (\$281,751.00) with interest thereon at the rate of 6.870% per annum. A true and correct copy of the Note is attached hereto as Exhibit "A". Movant is the Servicer, the holder of the Note, and the mortgagee of record, holding a first security interest in the below described real property and is authorized to bring this action as Movant on behalf of the owner of the loan* pursuant to the Fannie Mae Single-Family Servicing Guide, which is part of the servicing agreement between Servicer and Fannie Mae, and which is published on AllRegs at <https://www.efanniemae.com/sf/guides/ssg/#>.

4. The indebtedness is secured by a Deed of Trust dated July 24, 2008 and executed by GARY MORGAN and MARHARYTA V. MORGAN on real estate with all improvements known as:

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND WITH THE
IMPROVEMENTS THEREON AND THE APPURTENANCES THERETO
BELONGING, LYING, BEING AND SITUATE IN THE CITY OF

* Federal National Mortgage Association ("Fannie Mae") is the owner of the loan.
BK1120E-66/MFR/DEBTOR/Northern/DALLAS/00000001506807

FREDERICKSBURG, VIRGINIA, AND BEING KNOWN, NUMBERED AND DESIGNATED AS LOT 352, IN PHASE 2, AS SHOWN ON A PLAT ENTITLED "PLAT OF SUBDIVISION OF VILLAGE OF IDLEWILD, PHASE 2", DATED FEBRUARY 15, 2005, LAST REVISED ON JUNE 25, 2005, MADE BY URBAN ENGINEERING AND ASSOCIATES, INC., AND DULY RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG, VIRGINIA, AS A PART OF A DEED OF SUBDIVISION, DEDICATION, EASEMENT AND VACATION RECORDED AS INSTRUMENT NO. 050000756, AND IN PLAT BOOK 13 AT PAGES 29-43; REFERENCE TO WHICH SAID DEED OF SUBDIVISION AND PLAT IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF THE PROPERTY HEREBY CONVEYED.

BEING A PORTION OF THE SAME REAL ESTATE CONVEYED UNTO THE GRANTOR HEREIN BY DEEDS DATED DECEMBER 18, 2003, FROM ROWE-CASTLE ASSOCIATES, LLC AND RECORDED IN THE AFORESAID CLERK'S OFFICE AS INSTRUMENT NO. 030004282, ALSO FROM NANCY RUSSLER, BETTY J, STRAUGHN AND EVELY S. BAXTER AND RECORDED IN THE AFORESAID CLERK'S OFFICE AS INSTRUMENT NO. 030004284.

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

5. Debtor has failed to maintain current the payments due under the Note and is presently in arrears for 9 payments through and including the January 1, 2010 payment.

6. The outstanding indebtedness to Movant is \$279,818.92 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Deed of Trust.

7. Further cause may exist to terminate the automatic stay if the Debtor fails to provide proof of adequate insurance and payment of applicable taxes by Debtor as required by the Note and Deed of Trust. Movant hereby demands proof of insurance and payment of applicable taxes by Debtor. Movant reserves the right to further assert that Debtor has failed to pay taxes or insurance based on the response of Debtor.

8. In accordance with the terms of the Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to,

fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor has failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Deed of Trust.

11. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

12. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

13. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ PAUL KIM

1/21/2010

PAUL KIM

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ADDISON, TX 75001

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ATTORNEY FOR MOVANT

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel.

NOTES: Paul Kim left a message for Robert Milbank regarding the property.

Date of Conference Call: December 29, 2009 4:42 p.m.

BY: /s/ PAUL KIM 1/21/2010

PAUL KIM

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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2010, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ PAUL KIM _____ 1/21/2010

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ATTORNEY FOR MOVANT

DEBTORS:

GARY MORGAN
1100 SAUNDERS DRIVE
FREDERICKSBURG, VA 22401

GARY MORGAN
7408 SLEEPY RIDGE CIRCLE
FORT WORTH, TX 76133

TRUSTEE:

ROBERT MILBANK, JR.
900 JACKSON STREET
SUITE 560
DALLAS, TX 75202

US TRUSTEE:

1100 COMMERCE STREET, ROOM 976
EARLE CABELL FEDERAL BLDG
DALLAS, TX 75242

DEBTOR'S ATTORNEY:

RICHARD REISTER
14001 DALLAS PARKWAY
SUITE 1200
DALLAS, TX 75240

MORTGAGORS:

MARHARYTA V. MORGAN
7408 SLEEPY RIDGE CIRCLE
FORT WORTH, TX 76133

MARHARYTA V. MORGAN
1100 SAUNDERS DRIVE
FREDERICKSBURG, VA 22401

PARTIES IN INTEREST:

BANK OF AMERICA
100 NORTH TRYON STREET
CHARLOTTE, NC 28255

PARTIES REQUESTING NOTICE:

EMC MORTGAGE CORPORATION
PO BOX 293510
LEWISVILLE, TX 75029-3150